IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3990 OF 2003

Avinash Anant Vaidya,
Age 48 years, residing at
Chinmaya, 32, Shastri Nagar
Society, Indira Nagar,
Nashik 422 009. .. Petitioner

v/s.

1. The Regional Provident Fund
Commissioner, Sub-Accounts
Office, Thane, Vardhan Commercial
Complex, 6th floor, M.I.D.C.
Road No.16, Wagle Estate,
Thane- 400 604.

2. The Regional Provident Fund
Commissioner, Sub-Accounts Office,
Nashik, Bhavishya Nidhi Bhavan,
Plot No.2, M.I.D.C. Area,
Satpur, Nashik 422 007.

3. The Assistant Provident Fund
Commissioner (Pension),
Bhavishya Nidhi Bhavan,
Plot No.2, M.I.D.C. Area,
Satpur, Nashik-422 007.

4. The Assistant Provident Fund
Commissioner (Pension),
Vardhan Commercial Complex,
Waghale Industrial Estate,
Thane-400 604. .. Respondents

Mr.Sachin Manale with Ms.Ranjana Godankar i/by
Mr.S.S.Pakale for the Petitioner.

Mr.R.K.Sharma for the respondents.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 23rd March, 2005

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ORAL JUDGMENT (Per R.M.Lodha, J.)

Avinash Anant Vaidya is the petitioner before us. He was working as Sales Manager since the year 1995 with M/s.Kopran Limited having its office at 1076, Parijat House, Worli, Mumbai (hereinafter to be referred as 'Employer'). The petitioner and the employer were contributing the provident fund. As a Sales Manager, the petitioner was entrusted with the activities of the sales. He had a touring job and would tour various States for promotion of the sales. The petitioner met with an accident at Dadar Railway Station on 25.6.2000 while coming to Mumbai by Barelly-Dadar Express after finishing his work. He was taken to K.E.M.Hospital by railway police. On 7.7.2000 he was transferred to Lifeline Hospital, Nashik and was discharged on 31.8.2000. Due to the injuries sustained by him in the accident, the petitioner's both legs were amputated. Since he was unable to do the work and discharge his duties, the unfortunate circumstances left no choice for him but to resign from his job on 10.1.2001. For the purposes of disability pension and withdrawal of provident fund, all requisite forms including Form 10-D under the Employees' Provident Fund Scheme, 1952 were submitted by the employer to the Assistant Provident Fund Commissioner (Pension),

Thane-respondent No.4. The respondent No.4 was requested to forward the pension and provident fund papers to Nashik Provident Fund Region and also to have the medical examination of the petitioner conducted by the Medical Board. It appears that the respondent No.4 vide communication dated 8.3.2002 directed the petitioner to get the certificate from the Medical Board, locally constituted by the Civil Surgeon. Since the Civil Surgeon, Nashik was not the competent authority as per the provident fund norms, ultimately, the matter was referred to Dhule Medical Board for the medical examination of the petitioner to ascertain the nature and percentage of disablement for deciding the eligibility for disablement pension under the Employees' Pension Scheme, 1995. The petitioner appeared before the Dhule Medical Board for medical examination on 28th August, 2002. By letter dated 15.1.2003, the Assistant Provident Fund Commissioner, Nashik-respondent No.3 intimated to the petitioner that he was not entitled for disability pension as his disability percentage was 90%. Aggrieved by the said communication, the present writ petition has been filed.

2. The respondents filed reply affidavit on 2nd April, 2004 and have denied petitioner's claim of

disablement pension. It is averred in the reply that since the Medical Board has not certified 100% disablement, the disablement pension was not payable. According to the respondents, for claim of disablement pension under the Employees' Pension Scheme, 1995, the employee must have suffered permanent total disablement and that means the disablement must be 100%.

3. We reflected over the matter in the light of the rival case set up by the parties.

4. Paragraph 2(xvi) of the Employees' Pension Scheme, 1995 defines permanent total disablement for the purposes of the scheme and it reads thus-

> "2(xvi) "Permanent total disablement" means such disablement of permanent nature as incapacitates an employee for all work which he/she was capable of performing at the time of disablement regardless whether such disablement is sustained in the course of employment or otherwise."

5. Paragraph 15 of the said Scheme provides for benefit on permanent and total disablement during the service which reads thus-

> "15. Benefits on permanent and total disablement during the service.-(1) A member, who is permanently and totally disabled during employment shall be entitled to pension as admissible under sub-paragraphs (2) to (5) of paragraph 12,

as the case may be, subject to a minimum of Rs.250/- per month notwithstanding the fact that he/she has not rendered the pensionable service entitling him/her to pension under paragraph 12 provided that he/she has made at least one month's contribution to the Pension Fund.

(2) The monthly members pension in such cases shall be payable from the date following the date of permanent total disablement and shall be tenable for the life time of the member.

(3) A member applying for benefits under this paragraph shall be required to undergo such medical examination as may be prescribed by the Central Board to determine whether or not he or she is permanently and totally unfit for the employment which he or she was doing at the time of such disablement."

6. Paragraph 17A provides for payment of pension

that reads thus-

"17A. Payment of pension.- The claims, complete in all respects submitted alongwith the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case, the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12 per cent per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner."

7. In the context of the aforesaid requirements to

enable an employee to be entitled to disablement

pension in the scheme, when we turn to the medical certificate issued by the Medical Board duly constituted, we find that though the percentage of disablement has been found to be 90%, the Board's answer was in affirmative (yes) to column (9) viz., whether the member is permanently and totally unfit for employment. The Board's answer was also 'yes' to column (10) viz. whether the permanent and total disablement incapacitated the petitioner for all work which he was capable of performing at the time of disablement.

8. Columns 8,9 and 10 of the certificate of the Medical Board which is extremely relevant for the present purposes may be reproduced as it is.

8.	Whether the relevant nature of disablement has resulted in permanent and total disablement:	Yes
	(If so, please certify so in clear terms and furnish the relevant details)	90%
9.	Whether the member is permanently and Totally unfit for employment:	Yes
10.	Whether permanent total disablement Incapacitated the member employee for all work which he/she was capable of performing at the time of disablement:	Yes

9. In other words, the Medical Board certified that the petitioner has suffered permanent and total disablement and that has incapacitated him for all the work that he was capable of doing at the time of disablement. In our view, to enable the member to claim the disability pension, what is important is not the percentage of the disability but the factum of permanent and total unfitness for employment. After all, the scheme of 1995 is the beneficial scheme for the employees who had suffered disablement and the provisions of this scheme have to be construed meaningfully that benefit the employees for whom this scheme has been framed. Permanent total disablement as defined in paragraph 2(xvi) of the Scheme, 1995 contemplates (one) that disablement is permanent in nature and (two) that such permanent disablement has resulted in incapacitating the employee for all work which he or she was capable of performing at the time of disablement.

10. We may also notice here section 2(1)(l) of the Workmen's Compensation Act, 1923 that defines the total disablement thus-

2(1)(l) "total disablement" means such

> disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:
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> [Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more;]

Schedule I appended to the Workmen's Compensation Act, 1923 at serial No.3, Part-I provides that the percentage of loss of earning capacity is 100% where workman has had amputation of both legs.

11. That the petitioner is permanently and totally unfit for employment and that the petitioner has suffered permanent and total disablement and that has incapacitated the petitioner for all work which he was capable of performing at the time of disablement is not all in doubt. That is certified by the Medical Board. It is a matter of record that on account of injuries sustained by the petitioner, he became physically and permanently disabled. The opinion of the Medical Board that

disability is equivalent to 90% is something which is the opinion of the Medical Board concerning the percentage of disability. The percentage of disability as opined by the Medical Board is not decisive. What is important is not the percentage of disability but the disability sustained by the employee that has rendered him permanently and totally unfit for the employment within the meaning of paragraph 2(xvi) of the pension scheme. For the purposes of employee's pension scheme, total and permanent disablement incapacitating the employee for work that he was performing at the time of disablement entitles him to the grant of disablement pension. The case of the petitioner is covered by the expression 'permanent total disablement' as defined in paragraph 2(xvi). The amputation of both legs has resulted in loss of 100% earning capacity to the employee.

12. The Division Bench of Andhra Pradesh High Court in the case of Regional Provident Fund Commissioner, Hyderabad and anr. v. Deepak Kulkarni, 2002-II-LLJ, page 25 considered the case similar to the case before us. That was the case where an employee who was a member of the provident fund by virtue of his employment in Bakelyte Hylam Limited suffered disablement. He was referred to

the Regional Medical Board. The Medical Board certified that the employee had sustained permanent disability of 75 to 80% though he was found to be permanent and totally unfit for employment. The permanent and total disablement had incapacitated the employee. The claim of the employee for disablement pension was rejected by the concerned Provident Fund Commissioner under the Employees' Pension Scheme, 1995. The aggrieved employee filed writ petition. The writ petition came to be allowed by the learned Single Judge of the Andhra Pradesh High Court holding thus-

> "In the present case, the petitioner suffered 75% to 80% disability. Total disablement is defined under Section 2(1) of the Workmen's Compensation Act, 1923.The work, which the workman was capable of performing at the time of the accident, is material to consider whether it is a case of total disablement in view of the injuries sustained in the accident. If the workman is incapacitated to do all the work which he was capable of performing at the time of the accident, it is a case of total disablement. In the present case, the workman is totally incapacitated to do the work which he was capable of performing at the time of the accident and, therefore, it can be treated as total disablement. This issue is already settled by this Court in The National Insurance Company Limited v. Mohd. Saleem Khan, 1991(3) ALT 504 and G. Anjaneyulu v. Alla Seshi Reddy, 2001 LLR 997.
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> For the foregoing discussions, the writ petition is allowed directing the respondents to consider the case of the petitioner for payment of disability

pension."

13. The Regional Provident Fund Commissioner aggrieved by the judgment of the learned Single Judge, preferred appeal before the Division Bench of the Andhra Pradesh High Court. The Division Bench presided over by Dr.A.R.Lakshmanan, C.J. (as he then was) in paragraphs 29 and 30 of the report held thus-

"29. In the instant case, the certificate issued by the Medical Board clearly shows that the respondent has suffered permanent disability which is a question of fact and therefore, the finding cannot be challenged by the appellants in the writ proceedings. We have already noticed different columns mentioned in the Certificate wherein the Doctors have clearly mentioned that the respondent cannot discharge his functions effectively because of the total disablement. The respondent in this case was incapacitated for all work by the post-Traumatic Right-Spastic Hemiplegia and the respondent will not be able to do any work and therefore, in our opinion, the disablement is 100%. In the instant case, it is a matter of record that on account of the injury sustained by the respondent, he became physically and permanently disabled and after examination, the Medical Board issued a certificate stating that the respondent has sustained permanent disability. The doctors have opined that the disability is equivalent to 75% to 80%. In our opinion, the percentage of disability is not the criteria. But the criteria is whether the disablement incapacitates the employee for all work which he was capable of performing at the time of disablement. In the instant case, the respondent had worked as a Supervisor and he was hit by a vehicle on September 11, 1998 while on the

> way to his home after duty and on account of the injury sustained, he became permanently disabled.
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> 30. In the instant case, the certificate issued by the Medical Board showed that the respondent cannot perform the duties as he was doing on the date of accident. Therefore, the disability has to be taken as 100% irrespective of the percentage of 75 to 80%. Since the disability sustained is 100%, we are of the opinion that the respondent should succeed in getting the pension as prayed for. The writ appeal fails and it is dismissed accordingly. However, there will be no order as to costs."

14. The Division Bench of Andhra Pradesh High Court, thus, held that the percentage of disability is not the criteria but the criteria is whether the disablement incapacitates the employee for all work which he was capable of performing at the time of disablement. We respectfully concur with the view of the Andhra Pradesh High Court.

15. Before we close, we would like to observe that the denial of disablement pension to the petitioner was unjustified. The cost needs to be imposed on the respondents for unnecessarily and unjustifiably opposing the just claim of the petitioner.

16. We, accordingly, allow the writ petition with cost of Rs.5000/- and set aside the communication dated 15.1.2003. We hold that the petitioner is

entitled to disablement pension under the Employees' Pension Scheme, 1995 from 15.1.2003 i.e., the date when the impugned order came to be passed. The arrears of disablement pension alongwith interest at the rate of 8% per annum shall be paid by the respondents to the petitioner within four weeks from today. The respondents shall henceforth pay monthly disablement pension to the petitioner in time.

(R.M.LODHA, J.)

(R.S.MOHITE, J.)